

## IV

### CLASSIC NATURAL RIGHT



SOCRATES is said to have been the first who called philosophy down from heaven and forced it to make inquiries about life and manners and good and bad things. In other words, he is said to have been the founder of political philosophy.<sup>1</sup> To the extent to which this is true, he was the originator of the whole tradition of natural right teachings. The particular natural right doctrine which was originated by Socrates and developed by Plato, Aristotle, the Stoics, and the Christian thinkers (especially Thomas Aquinas) may be called the classic natural right doctrine. It must be distinguished from the modern natural right doctrine that emerged in the seventeenth century.

The full understanding of the classic natural right doctrine would require a full understanding of the change in thought that was effected by Socrates. Such an understanding is not at our disposal. From a cursory reading of the pertinent texts which at first glance seem to supply the most authentic information, the modern reader almost inevitably arrives at the following view: Socrates turned away from the study of nature and limited his investigations to human things. Being unconcerned with nature, he refused to look at human things in the light of the subversive distinction between nature and law (convention). He rather identified law with nature. He cer-

1. Cicero *Tusc. Disp.* v. 10; Hobbes, *De cive*, Preface, near the beginning. As for the alleged Pythagorean origins of political philosophy, consider Plato *Republic* 600<sup>a</sup>9–b<sup>5</sup> as well as Cicero *Tusc. Disp.* v. 8–10 and *Republic* i. 16.



tainly identified the just with the legal.<sup>2</sup> He thus restored the ancestral morality, although in the element of reflection. This view mistakes Socrates' ambiguous starting point or the ambiguous result of his inquiries for the substance of his thought. To mention for the moment only one point, the distinction between nature and law (convention) retains its full significance for Socrates and for classic natural right in general. The classics presuppose the validity of that distinction when demanding that the law should follow the order established by nature, or when speaking of the co-operation between nature and law. They oppose to the denial of natural right and natural morality the distinction between natural right and legal right as well as the distinction between natural and (merely) human morality. They preserve the same distinction by distinguishing between genuine virtue and political or vulgar virtue. The characteristic institutions of Plato's best polity are "in accordance with nature," and they are "against the habits or custom," whereas the opposite institutions, which are customary practically everywhere, are "against nature." Aristotle could not explain what money is except by distinguishing between natural wealth and conventional wealth. He could not explain what slavery is except by distinguishing between natural slavery and legal slavery.<sup>3</sup>

Let us then see what is implied by Socrates' turning to the study of human things. His study of human things consisted in raising the question "What is?" in regard to those things—for instance, the question "What is courage?" or "What is the city?" But it was not limited to raising the question "What is?" in regard to specific human things, such as the various

2. Plato *Apology of Socrates* 19<sup>a</sup>8-d7; Xenophon *Memorabilia* i. 1. 11-16; iv. 3. 14; 4. 12 ff., 7, 8. 4; Aristotle *Metaphysics* 987<sup>b</sup>1-2; *De part. anim.* 642<sup>a</sup>28-30; Cicero *Republic* i. 15-16.

3. Plato *Republic* 456<sup>b</sup>12-c2, 452<sup>a</sup>7, c6-7, 484<sup>c</sup>7-d3, 500<sup>d</sup>4-8, 501<sup>b</sup>1-c2; *Laws* 794<sup>d</sup>4-795<sup>d</sup>5; Xenophon *Oeconomicus* 7. 16 and *Hiero* 3. 9; Aristotle *Nicomachean Ethics* 1133<sup>a</sup>29-31 and 1134<sup>b</sup>18-1135<sup>a</sup>5; *Politics* 1255<sup>a</sup>1-b15, 1257<sup>b</sup>10 ff.



virtues. Socrates was forced to raise the question as to what the human things as such are, or what the *ratio rerum humanarum* is.<sup>4</sup> But it is impossible to grasp the distinctive character of human things as such without grasping the essential difference between human things and the things which are not human, i.e., the divine or natural things. This, in turn, presupposes some understanding of the divine or natural things as such. Socrates' study of the human things was then based on the comprehensive study of "all things." Like every other philosopher, he identified wisdom, or the goal of philosophy, with the science of all the beings: he never ceased considering "what each of the beings is."<sup>5</sup>

Contrary to appearances, Socrates' turn to the study of human things was based, not upon disregard of the divine or natural things, but upon a new approach to the understanding of all things. That approach was indeed of such a character that it permitted, and favored, the study of human things as such, i.e., of the human things in so far as they are not reducible to the divine or natural things. Socrates deviated from his predecessors by identifying the science of the whole, or of everything that is, with the understanding of "what each of the beings is." For "to be" means "to be something" and hence to be different from things which are "something else"; "to be" means therefore "to be a part." Hence the whole cannot "be" in the same sense in which everything that is "something" "is"; the whole must be "beyond being." And yet the whole is the totality of the parts. To understand the whole then means to understand all the parts of the whole or the articulation of the whole. If "to be" is "to be something," the being of a thing, or the nature of a thing, is primarily its

4. Compare Cicero *Republic* ii. 52, where the understanding of the *ratio rerum civilium*, as distinguished from the setting-up of a model for political action, is said to be the purpose of Plato's *Republic*.

5. Xenophon *Memorabilia* i. 1. 16; iv. 6. 1, 7; 7. 3-5.



What, its "shape" or "form" or "character," as distinguished in particular from that out of which it has come into being. The thing itself, the completed thing, cannot be understood as a product of the process leading up to it, but, on the contrary, the process cannot be understood except in the light of the completed thing or of the end of the process. The What is, as such, the character of a class of things or of a "tribe" of things—of things which by nature belong together or form a natural group. The whole has a natural articulation. To understand the whole, therefore, means no longer primarily to discover the roots out of which the completed whole, the articulated whole, the whole consisting of distinct groups of things, the intelligible whole, the *cosmos*, has grown, or to discover the cause which has transformed the *chaos* into a *cosmos*, or to perceive the unity which is hidden behind the variety of things or appearances, but to understand the unity that is revealed in the manifest articulation of the completed whole. This view supplies the basis for the distinction between the various sciences: the distinction between the various sciences corresponds to the natural articulation of the whole. This view makes possible, and it favors in particular, the study of the human things as such.

Socrates seems to have regarded the change which he brought about as a return to "sobriety" and "moderation" from the "madness" of his predecessors. In contradistinction to his predecessors, he did not separate wisdom from moderation. In present-day parlance one can describe the change in question as a return to "common sense" or to "the world of common sense." That to which the question "What is?" points is the *eidos* of a thing, the shape or form or character or "idea" of a thing. It is no accident that the term *eidos* signifies primarily that which is visible to all without any particular effort or what one might call the "surface" of the things. Socrates started not from what is first in itself or first by nature



but from what is first for us, from what comes to sight first, from the phenomena. But the being of things, their What, comes first to sight, not in what we see of them, but in what is said about them or in opinions about them. Accordingly, Socrates started in his understanding of the natures of things from the opinions about their natures. For every opinion is based on some awareness, on some perception with the mind's eye, of something. Socrates implied that disregarding the opinions about the natures of things would amount to abandoning the most important access to reality which we have, or the most important vestiges of the truth which are within our reach. He implied that "the universal doubt" of all opinions would lead us, not into the heart of the truth, but into a void. Philosophy consists, therefore, in the ascent from opinions to knowledge or to the truth, in an ascent that may be said to be guided by opinions. It is this ascent which Socrates had primarily in mind when he called philosophy "dialectics." Dialectics is the art of conversation or of friendly dispute. The friendly dispute which leads toward the truth is made possible or necessary by the fact that opinions about what things are, or what some very important groups of things are, contradict one another. Recognizing the contradiction, one is forced to go beyond opinions toward the consistent view of the nature of the thing concerned. That consistent view makes visible the relative truth of the contradictory opinions; the consistent view proves to be the comprehensive or total view. The opinions are thus seen to be fragments of the truth, soiled fragments of the pure truth. In other words, the opinions prove to be solicited by the self-subsisting truth, and the ascent to the truth proves to be guided by the self-subsistent truth which all men always divine.

On this basis it becomes possible to understand why the variety of opinions about right or justice not only is compatible with the existence of natural right or the idea of jus-



tice but is required by it. The variety of notions of justice could be said to refute the contention that there is natural right, if the existence of natural right required actual consent of all men in regard to the principles of right. But we learn from Socrates, or from Plato, that what is required is not more than potential consent. Plato, as it were, says: Take any opinion about right, however fantastic or "primitive," that you please; you can be certain prior to having investigated it that it points beyond itself, that the people who cherish the opinion in question contradict that very opinion somehow and thus are forced to go beyond it in the direction of the one true view of justice, provided that a philosopher arises among them.

Let us try to express this in more general terms. All knowledge, however limited or "scientific," presupposes a horizon, a comprehensive view within which knowledge is possible. All understanding presupposes a fundamental awareness of the whole: prior to any perception of particular things, the human soul must have had a vision of the ideas, a vision of the articulated whole. However much the comprehensive visions which animate the various societies may differ, they all are visions of the same—of the whole. Therefore, they do not merely differ from, but contradict, one another. This very fact forces man to realize that each of those visions, taken by itself, is merely an opinion about the whole or an inadequate articulation of the fundamental awareness of the whole and thus points beyond itself toward an adequate articulation. There is no guaranty that the quest for adequate articulation will ever lead beyond an understanding of the fundamental alternatives or that philosophy will ever legitimately go beyond the stage of discussion or disputation and will ever reach the stage of decision. The unfinishable character of the quest for adequate articulation of the whole does not entitle one, however, to limit philosophy to the understanding of a part, however important.



For the meaning of a part depends on the meaning of the whole. In particular, such interpretation of a part as is based on fundamental experiences alone, without recourse to hypothetical assumptions about the whole, is ultimately not superior to other interpretations of that part which are frankly based on such hypothetical assumptions.

Conventionalism disregards the understanding embodied in opinion and appeals from opinion to nature. For this reason, to say nothing of others, Socrates and his successors were forced to prove the existence of natural right on the ground chosen by conventionalism. They had to prove it by appeal to the "facts" as distinguished from the "speeches."<sup>6</sup> As will appear presently, this seemingly more direct appeal to being merely confirms the fundamental Socratic thesis.

The basic premise of conventionalism appeared to be the identification of the good with the pleasant. Accordingly, the basic part of the classic natural right teaching is the critique of hedonism. The thesis of the classics is that the good is essentially different from the pleasant, that the good is more fundamental than the pleasant. The most common pleasures are connected with the satisfaction of wants; the wants precede the pleasures; the wants supply, as it were, the channels within which pleasure can move; they determine what can possibly be pleasant. The primary fact is not pleasure, or the desire for pleasure, but rather the wants and the striving for their satisfaction. It is the variety of wants that accounts for the variety of pleasures; the difference of kinds of pleasures cannot be understood in terms of pleasure but only by reference to the wants which make possible the various kinds of pleasures. The different kinds of wants are not a bundle of urges; there is a natural order of the wants. Different kinds of beings seek or enjoy different kinds of pleasure: the pleasures of an ass differ from the pleasures of a human being. The order of the wants of a being points back to the natural constitution, to the What, of the

6. See Plato *Republic* 358<sup>e</sup>3, 367<sup>b</sup>2-5, <sup>e</sup>2, 369<sup>a</sup>5-6, <sup>c</sup>9-10, 370<sup>a</sup>8-b1.



being concerned; it is that constitution which determines the order, the hierarchy, of the various wants or of the various inclinations of a being. To the specific constitution there corresponds a specific operation, a specific work. A being is good, it is "in order," if it does its proper work well. Hence man will be good if he does well the proper work of man, the work corresponding to the nature of man and required by it. To determine what is by nature good for man or the natural human good, one must determine what the nature of man, or man's natural constitution, is. It is the hierarchic order of man's natural constitution which supplies the basis for natural right as the classics understood it. In one way or another everyone distinguishes between the body and the soul; and everyone can be forced to admit that he cannot, without contradicting himself, deny that the soul stands higher than the body. That which distinguishes the human soul from the souls of the brutes, that which distinguishes man from the brutes, is speech or reason or understanding. Therefore, the proper work of man consists in living thoughtfully, in understanding, and in thoughtful action. The good life is the life that is in accordance with the natural order of man's being, the life that flows from a well-ordered or healthy soul. The good life simply, is the life in which the requirements of man's natural inclinations are fulfilled in the proper order to the highest possible degree, the life of a man who is awake to the highest possible degree, the life of a man in whose soul nothing lies waste. The good life is the perfection of man's nature. It is the life according to nature. One may therefore call the rules circumscribing the general character of the good life "the natural law." The life according to nature is the life of human excellence or virtue, the life of a "high-class person," and not the life of pleasure as pleasure.<sup>7</sup>

7. Plato *Gorgias* 499<sup>e</sup>6-500<sup>a</sup>3; *Republic* 369<sup>e</sup>10 ff.; compare *Republic* 352<sup>d</sup>6-353<sup>e</sup>6, 433<sup>a</sup>1-b4, 441<sup>d</sup>12 ff., and 444<sup>d</sup>13-445<sup>b</sup>4 with Aristotle *Nicomachean Ethics* 1098<sup>a</sup>8-17; Cicero *De finibus* ii. 33-34, 40; iv. 16, 25, 34, 37; v. 26; *Laws* i. 17, 22, 25, 27, 45, 58-62.



The thesis that the life according to nature is the life of human excellence can be defended on hedonistic grounds. Yet the classics protested against this manner of understanding the good life. For, from the point of view of hedonism, nobility of character is good because it is conducive to a life of pleasure or even indispensable for it: nobility of character is the handmaid of pleasure; it is not good for its own sake. According to the classics, this interpretation distorts the phenomena as they are known from experience to every unbiased and competent, i.e., not morally obtuse, man. We admire excellence without any regard to our pleasures or to our benefits. No one understands by a good man or man of excellence a man who leads a pleasant life. We distinguish between better and worse men. The difference between them is indeed reflected in the difference in the kinds of pleasure which they prefer. But one cannot understand this difference in the level of pleasures in terms of pleasure; for that level is determined not by pleasure but by the rank of human beings. We know that it is a vulgar error to identify the man of excellence with one's benefactor. We admire, for example, a strategic genius at the head of the victorious army of our enemies. There are things which are admirable, or noble, by nature, intrinsically. It is characteristic of all or most of them that they contain no reference to one's selfish interests or that they imply a freedom from calculation. The various human things which are by nature noble or admirable are essentially the parts of human nobility in its completion, or are related to it; they all point toward the well-ordered soul, incomparably the most admirable human phenomenon. The phenomenon of admiration of human excellence cannot be explained on hedonistic or utilitarian grounds, except by means of *ad hoc* hypotheses. These hypotheses lead to the assertion that all admiration is, at best, a kind of telescoped calculation of benefits for ourselves. They are the outcome of a materialistic or crypto-materialistic view, which



forces its holders to understand the higher as nothing but the effect of the lower, or which prevents them from considering the possibility that there are phenomena which are simply irreducible to their conditions, that there are phenomena that form a class by themselves. The hypotheses in question are not conceived in the spirit of an empirical science of man.<sup>8</sup>

Man is by nature a social being. He is so constituted that he cannot live, or live well, except by living with others. Since it is reason or speech that distinguishes him from the other animals, and speech is communication, man is social in a more radical sense than any other social animal: humanity itself is sociality. Man refers himself to others, or rather he is referred to others, in every human act, regardless of whether that act is "social" or "antisocial." His sociality does not proceed, then, from a calculation of the pleasures which he expects from association, but he derives pleasure from association because he is by nature social. Love, affection, friendship, pity, are as natural to him as concern with his own good and calculation of what is conducive to his own good. It is man's natural sociality that is the basis of natural right in the narrow or strict sense of right. Because man is by nature social, the perfection of his nature includes the social virtue par excellence, justice; justice and right are natural. All members of the same species are akin to one another. This natural kinship is deepened and transfigured in the case of man as a consequence of his radical sociality. In the case of man the individual's concern with procreation is only a part of his concern with the preservation of the species. There is no relation of man to man in which man is absolutely free to act as he pleases or as it suits him. And all men are somehow aware of this fact. Every ideology is an attempt to justify before one's self or

8. Plato *Gorgias* 497<sup>d</sup>8 ff.; *Republic* 402<sup>d</sup>1-9; Xenophon *Hellenica* vii. 3. 12; Aristotle *Nicomachean Ethics* 1174<sup>a</sup>1-8; *Rhetoric* 1366<sup>b</sup>36 ff.; Cicero *De finibus* ii. 45, 64-65, 69; v. 47, 61; *Laws* i. 37, 41, 48, 51, 55, 59.



others such courses of action as are somehow felt to be in need of justification, i.e., as are not obviously right. Why did the Athenians believe in their autochthony, except because they knew that robbing others of their land is not just and because they felt that a self-respecting society cannot become reconciled to the notion that its foundation was laid in crime?<sup>9</sup> Why do the Hindus believe in their *karma* doctrine if not because they know that otherwise their caste system would be indefensible? By virtue of his rationality, man has a latitude of alternatives such as no other earthly being has. The sense of this latitude, of this freedom, is accompanied by a sense that the full and unrestrained exercise of that freedom is not right. Man's freedom is accompanied by a sacred awe, by a kind of divination that not everything is permitted.<sup>10</sup> We may call this awe-inspired fear "man's natural conscience." Restraint is therefore as natural or as primeval as freedom. As long as man has not cultivated his reason properly, he will have all sorts of fantastic notions as to the limits set to his freedom; he will elaborate absurd taboos. But what prompts the savages in their savage doings is not savagery but the divination of right.

Man cannot reach his perfection except in society or, more precisely, in civil society. Civil society, or the city as the classics conceived of it, is a closed society and is, in addition, what today would be called a "small society." A city, one may say, is a community in which everyone knows, not indeed every other member, but at least an acquaintance of every other member. A society meant to make man's perfection pos-

9. Plato *Republic* 369<sup>b</sup>5-370<sup>b</sup>2; *Symposium* 207<sup>a</sup>6-<sup>c</sup>1; *Laws* 776<sup>d</sup>5-778<sup>a</sup>6; Aristotle *Politics* 1253<sup>a</sup>7-18, 1278<sup>b</sup>18-25; *Nicomachean Ethics* 1161<sup>b</sup>1-8 (cf. Plato *Republic* 395<sup>e</sup>5) and 1170<sup>b</sup>10-14; *Rhetoric* 1373<sup>b</sup>6-9; Isocrates *Panegyricus* 23-24; Cicero *Republic* i. 1, 38-41; iii. 1-3, 25; iv. 3; *Laws* i. 30, 33-35, 43; *De finibus* ii. 45, 78, 109-10; iii. 62-71; iv. 17-18; Grotius *De jure belli*, Prolegomena, §§ 6-8.

10. Cicero *Republic* v. 6; *Laws* i. 24, 40; *De finibus* iv. 18.



sible must be kept together by mutual trust, and trust presupposes acquaintance. Without such trust, the classics thought, there cannot be freedom; the alternative to the city, or a federation of cities, was the despotically ruled empire (headed, if possible, by a deified ruler) or a condition approaching anarchy. A city is a community commensurate with man's natural powers of firsthand or direct knowledge. It is a community which can be taken in in one view, or in which a mature man can find his bearings through his own observation, without having to rely habitually on indirect information in matters of vital importance. For direct knowledge of men can safely be replaced by indirect knowledge only so far as the individuals who make up the political multitude are uniform or "mass-men." Only a society small enough to permit mutual trust is small enough to permit mutual responsibility or supervision—the supervision of actions or manners which is indispensable for a society concerned with the perfection of its members; in a very large city, in "Babylon," everyone can live more or less as he lists. Just as man's natural power of firsthand knowledge, so his power of love or of active concern, is by nature limited; the limits of the city coincide with the range of man's active concern for nonanonymous individuals. Furthermore, political freedom, and especially that political freedom that justifies itself by the pursuit of human excellence, is not a gift of heaven; it becomes actual only through the efforts of many generations, and its preservation always requires the highest degree of vigilance. The probability that all human societies should be capable of genuine freedom at the same time is exceedingly small. For all precious things are exceedingly rare. An open or all-comprehensive society would consist of many societies which are on vastly different levels of political maturity, and the chances are overwhelming that the lower societies would drag down the higher ones. An open or all-comprehensive society will exist on a lower level of hu-



manity than a closed society, which, through generations, has made a supreme effort toward human perfection. The prospects for the existence of a good society are therefore greater if there is a multitude of independent societies than if there is only one independent society. If the society in which man can reach the perfection of his nature is necessarily a closed society, the distinction of the human race into a number of independent groups is according to nature. This distinction is not natural in the sense that the members of one civil society are by nature different from the members of others. Cities do not grow like plants. They are not simply based on common descent. They come into being through human actions. There is an element of choice and even of arbitrariness involved in the "settling together" of these particular human beings to the exclusion of others. This would be unjust only if the condition of those excluded were impaired by their exclusion. But the condition of people who have not yet made any serious effort toward the perfection of human nature is, of necessity, bad in the decisive respect; it cannot possibly be impaired by the mere fact that those among them whose souls have been stirred by the call to perfection do make such efforts. Besides, there is no necessary reason why those excluded should not form a civil society of their own. Civil society as a closed society is possible and necessary in accordance with justice, because it is in accordance with nature.<sup>11</sup>

If restraint is as natural to man as is freedom, and restraint must in many cases be forcible restraint in order to be effective, one cannot say that the city is conventional or against nature because it is coercive society. Man is so built that he cannot achieve the perfection of his humanity except by keeping

11. Plato *Republic* 423<sup>a</sup>5-c5; *Laws* 581<sup>c</sup>4-d5, 708<sup>b</sup>1-d7, 738<sup>d</sup>6-e5, 949<sup>e</sup>3 ff.; Aristotle *Nicomachean Ethics* 1158<sup>a</sup>10-18, 1170<sup>b</sup>20-1171<sup>a</sup>20; *Politics* 1253<sup>a</sup>30-31, 1276<sup>a</sup>27-34 (cf. Thomas Aquinas, *ad loc.*), 1326<sup>a</sup>9-b26; Isocrates *Antidosis* 171-72; Cicero *Laws* ii. 5; cf. Thomas, *Summa theologiae* i. qu. 65, a. 2, ad 3.



down his lower impulses. He cannot rule his body by persuasion. This fact alone shows that even despotic rule is not *per se* against nature. What is true of self-restraint, self-coercion, and power over one's self applies in principle to the restraint and coercion of others and to power over others. To take the extreme case, despotic rule is unjust only if it is applied to beings who can be ruled by persuasion or whose understanding is sufficient: Prospero's rule over Caliban is by nature just. Justice and coercion are not mutually exclusive; in fact, it is not altogether wrong to describe justice as a kind of benevolent coercion. Justice and virtue in general are necessarily a kind of power. To say that power as such is evil or corrupting would therefore amount to saying that virtue is evil or corrupting. While some men are corrupted by wielding power, others are improved by it: "power will show a man."<sup>12</sup>

The full actualization of humanity would then seem to consist, not in some sort of passive membership in civil society, but in the properly directed activity of the statesman, the legislator, or the founder. Serious concern for the perfection of a community requires a higher degree of virtue than serious concern for the perfection of an individual. The judge and ruler has larger and nobler opportunities to act justly than the ordinary man. The good man is not identical simply with the good citizen but with the good citizen who exercises the function of a ruler in a good society. It is then something more solid than the dazzling splendor and clamor that attends high office and something more noble than the concern with the well-being of their bodies which induces men to pay homage to political greatness. Being sensitive to mankind's great objects, freedom and empire, they sense somehow that politics is the field on which human excellence can show itself in its full growth and on whose proper cultivation every form of excel-

12. Plato *Republic* 372<sup>b</sup>7-8 and 607<sup>a</sup>4, 519<sup>e</sup>4-520<sup>a</sup>5, 561<sup>d</sup>5-7; *Laws* 689<sup>e</sup> ff.; Aristotle *Nicomachean Ethics* 1130<sup>a</sup>1-2, 1180<sup>a</sup>14-22; *Politics* 1254<sup>a</sup>18-20, <sup>b</sup>5-6, 1255<sup>a</sup>3-22, 1325<sup>b</sup>7 ff.



lence is in a way dependent. Freedom and empire are desired as elements or conditions of happiness. But the feelings which are stirred by the very words "freedom" and "empire" point to a more adequate understanding of happiness than that which underlies the identification of happiness with the well-being of the body or the gratification of vanity; they point to the view that happiness or the core of happiness consists in human excellence. Political activity is then properly directed if it is directed toward human perfection or virtue. The city has therefore ultimately no other end than the individual. The morality of civil society or of the state is the same as the morality of the individual. The city is essentially different from a gang of robbers because it is not merely an organ, or an expression, of collective selfishness. Since the ultimate end of the city is the same as that of the individual, the end of the city is peaceful activity in accordance with the dignity of man, and not war and conquest.<sup>13</sup>

Since the classics viewed moral and political matters in the light of man's perfection, they were not egalitarians. Not all men are equally equipped by nature for progress toward perfection, or not all "natures" are "good natures." While all men, i.e., all normal men, have the capacity for virtue, some need guidance by others, whereas others do not at all or to a much lesser degree. Besides, regardless of differences of natural capacity, not all men strive for virtue with equal earnestness. However great an influence must be ascribed to the way in which men are brought up, the difference between good and bad upbringing is partly due to the difference between a favorable and an unfavorable natural "environment." Since men

13. Thucydides iii. 45. 6; Plato *Gorgias* 464<sup>b</sup>3-<sup>c</sup>3, 478<sup>a</sup>1-<sup>b</sup>5, 521<sup>d</sup>6-<sup>e</sup>1; *Clitopho* 408<sup>b</sup>2-5; *Laws* 628<sup>b</sup>6-<sup>e</sup>1, 645<sup>b</sup>1-8; Xenophon *Memorabilia* ii. 1. 17; iii. 2. 4; iv. 2. 11; Aristotle *Nicomachean Ethics* 1094<sup>b</sup>7-10, 1129<sup>b</sup>25-1130<sup>a</sup>8; *Politics* 1278<sup>b</sup>1-5, 1324<sup>b</sup>23-41, 1333<sup>b</sup>39 ff.; Cicero *Republic* i. 1; iii. 10-11, 34-41; vi. 13, 16; Thomas Aquinas, *De regimine principum* i. 9.



are then unequal in regard to human perfection, i.e., in the decisive respect, equal rights for all appeared to the classics as most unjust. They contended that some men are by nature superior to others and therefore, according to natural right, the rulers of others. It is sometimes suggested that the view of the classics was rejected by the Stoics and especially by Cicero and that this change marks an epoch in the development of natural right doctrine or a radical break with the natural right doctrine of Socrates, Plato, and Aristotle. But Cicero himself, who must be supposed to have known what he was talking about, was wholly unaware of a radical difference between Plato's teaching and his own. The crucial passage in Cicero's *Laws*, which according to a common view is meant to establish egalitarian natural right, is, in fact, meant to prove man's natural sociality. In order to prove man's natural sociality, Cicero speaks of all men being similar to one another, i.e., akin to one another. He presents the similarity in question as the natural basis of man's benevolence to man: *simile simili gaudet*. It is a comparatively unimportant question whether an expression used by Cicero in this context might not be indicative of a slight bias in favor of egalitarian conceptions. It suffices to remark that Cicero's writings abound with statements which reaffirm the classical view that men are unequal in the decisive respect and which reaffirm the political implications of that view.<sup>14</sup>

In order to reach his highest stature, man must live in the best kind of society, in the kind of society that is most conducive to human excellence. The classics called the best society the best *politeia*. By this expression they indicated, first of all, that, in order to be good, society must be civil or politi-

14. Plato *Republic* 374<sup>e</sup>4-376<sup>e</sup>6, 431<sup>e</sup>5-7, 485<sup>a</sup>4-487<sup>a</sup>5; Xenophon *Memorabilia* iv. 1. 2; *Hiero* 7. 3; Aristotle *Nicomachean Ethics* 1099<sup>b</sup>18-20, 1095<sup>b</sup>10-13, 1179<sup>b</sup>7-1180<sup>a</sup>10, 1114<sup>a</sup>31-b25; *Politics* 1254<sup>a</sup>29-31, 1267<sup>b</sup>7, 1327<sup>b</sup>18-39; Cicero *Laws* i. 28-35; *Republic* i. 49, 52; iii. 4, 37-38; *De finibus* iv. 21, 56; v. 69; *Tusc. Disp.* ii. 11, 13; iv. 31-32; v. 68; *Offices* i. 105, 107. Thomas Aquinas, *Summa theologiae* i. qu. 96, a. 3 and 4.



cal society, a society in which there exists government of men and not merely administration of things. *Politeia* is ordinarily translated by "constitution." But when using the term "constitution" in a political context, modern men almost inevitably mean a legal phenomenon, something like the fundamental law of the land, and not something like the constitution of the body or of the soul. Yet *politeia* is not a legal phenomenon. The classics used *politeia* in contradistinction to "laws." The *politeia* is more fundamental than any laws; it is the source of all laws. The *politeia* is rather the factual distribution of power within the community than what constitutional law stipulates in regard to political power. The *politeia* may be defined by laws, but it need not be. The laws regarding a *politeia* may be deceptive, unintentionally and even intentionally, as to the true character of the *politeia*. No law, and hence no constitution, can be the fundamental political fact, because all laws depend on human beings. Laws have to be adopted, preserved, and administered by men. The human beings making up a political community may be "arranged" in greatly different ways in regard to the control of communal affairs. It is primarily the factual "arrangement" of human beings in regard to political power that is meant by *politeia*.

The American Constitution is not the same thing as the American way of life. *Politeia* means the way of life of a society rather than its constitution. Yet it is no accident that the unsatisfactory translation "constitution" is generally preferred to the translation "way of life of a society." When speaking of constitution, we think of government; we do not necessarily think of government when speaking of the way of life of a community. When speaking of *politeia*, the classics thought of the way of life of a community as essentially determined by its "form of government." We shall translate *politeia* by "regime," taking regime in the broad sense in which we sometimes take it when speaking, e.g., of the Ancien



Régime of France. The thought connecting "way of life of a society" and "form of government" can provisionally be stated as follows: The character, or tone, of a society depends on what the society regards as most respectable or most worthy of admiration. But by regarding certain habits or attitudes as most respectable, a society admits the superiority, the superior dignity, of those human beings who most perfectly embody the habits or attitudes in question. That is to say, every society regards a specific human type (or a specific mixture of human types) as authoritative. When the authoritative type is the common man, everything has to justify itself before the tribunal of the common man; everything which cannot be justified before that tribunal becomes, at best, merely tolerated, if not despised or suspect. And even those who do not recognize that tribunal are, willy-nilly, molded by its verdicts. What is true of the society ruled by the common man applies also to societies ruled by the priest, the wealthy merchant, the war lord, the gentleman, and so on. In order to be truly authoritative, the human beings who embody the admired habits or attitudes must have the decisive say within the community in broad daylight: they must form the regime. When the classics were chiefly concerned with the different regimes, and especially with the best regime, they implied that the paramount social phenomenon, or that social phenomenon than which only the natural phenomena are more fundamental, is the regime.<sup>15</sup>

15. Plato *Republic* 497<sup>a</sup>3-5, 544<sup>d</sup>6-7; *Laws* 711<sup>e</sup>5-8. Xenophon *Ways and Means* 1.1; *Cyropaedia* i. 2. 15; Isocrates *To Nicocles* 31; *Nicocles* 37; *Areopagiticus* 14; Aristotle *Nicomachean Ethics* 1181<sup>b</sup>12-23; *Politics* 1273<sup>a</sup>40 ff., 1278<sup>b</sup>11-13, 1288<sup>a</sup>23-24, 1289<sup>a</sup>12-20, 1292<sup>b</sup>11-18, 1295<sup>b</sup>1, 1297<sup>a</sup>14 ff.; Cicero *Republic* i. 47; v. 5-7; *Laws* i. 14-15, 17, 19; iii. 2. Cicero has indicated the higher dignity of "regime" as distinguished from "laws" by the contrast between the settings of his *Republic* and his *Laws*. The *Laws* are meant as a sequel to the *Republic*. In the *Republic* the younger Scipio, a philosopher-king, has a three-day conversation with some of his contemporaries about the best regime; in the *Laws* Cicero has a one-day conversation with some of his contemporaries about the laws appropriate to the best regime. The discussion of the *Republic* takes



The central significance of the phenomena called "regimes" has become somewhat blurred. The reasons for this change are the same as those responsible for the fact that political history has ceded its former pre-eminence to social, cultural, economic, etc., history. The emergence of these new branches of history finds its culmination—and its legitimation—in the concept of "civilizations" (or "cultures"). We are in the habit of speaking of "civilizations," where the classics spoke of "regimes." "Civilization" is the modern substitute for "regime." It is difficult to find out what a civilization is. A civilization is said to be a large society, but we are not told clearly what kind of society it is. If we inquire how one can tell one civilization from another, we are informed that the most obvious and least misleading mark is the difference in artistic styles. This means that civilizations are societies which are characterized by something which is never in the focus of interest of large societies as such: societies do not go to war with one another on account of differences of artistic styles. Our orientation by civilizations, instead of by regimes, would seem to be due to a peculiar estrangement from those life-and-death issues which move and animate societies and keep them together.

The best regime would today be called an "ideal regime" or simply an "ideal." The modern term "ideal" carries with it a host of connotations which obviate the understanding of what the classics meant by the best regime. Modern translators sometimes use "ideal" for rendering what the classics call "according to wish" or "according to prayer." The best regime is that for which one would wish or pray. Closer ex-

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place in winter: the participants seek the sun; in addition, the discussion takes place in the year of Scipio's death: political things are viewed in the light of eternity. The discussion of the *Laws* takes place in summer: the participants seek shade (*Republic* i. 18; vi. 8, 12; *Laws* i. 14, 15; ii. 7, 69; iii. 30; *Offices* iii. 1). For illustrations compare, *inter alia*, Machiavelli, *Discorsi*, III, 29; Burke, *Conciliation with America*, toward the end; John Stuart Mill, *Autobiography* ("Oxford World's Classics" ed.), pp. 294 and 137.



amination would show that the best regime is the object of the wish or prayer of all good men or of all gentlemen: the best regime, as presented by classical political philosophy, is the object of the wish or prayer of gentlemen as that object is interpreted by the philosopher. But the best regime, as the classics understand it, is not only most desirable; it is also meant to be feasible or possible, i.e., possible on earth. It is both desirable and possible because it is according to nature. Since it is according to nature, no miraculous or nonmiraculous change in human nature is required for its actualization; it does not require the abolition or extirpation of that evil or imperfection which is essential to man and to human life; it is therefore possible. And, since it is in accordance with the requirements of the excellence or perfection of human nature, it is most desirable. Yet, while the best regime is possible, its actualization is by no means necessary. Its actualization is very difficult, hence improbable, even extremely improbable. For man does not control the conditions under which it could become actual. Its actualization depends on chance. The best regime, which is according to nature, was perhaps never actual; there is no reason to assume that it is actual at present; and it may never become actual. It is of its essence to exist in speech as distinguished from deed. In a word, the best regime is, in itself—to use a term coined by one of the profoundest students of Plato's *Republic*—a “utopia.”<sup>16</sup>

The best regime is possible only under the most favorable conditions. It is therefore just or legitimate only under the most favorable conditions. Under more or less unfavorable conditions, only more or less imperfect regimes are possible and therefore legitimate. There is only one best regime, but

16. Plato *Republic* 457<sup>a</sup>3–4, <sup>c</sup>2, <sup>d</sup>4–9, 473<sup>a</sup>5–<sup>b</sup>1, 499<sup>b</sup>2–<sup>c</sup>3, 502<sup>c</sup>5–7, 540<sup>d</sup>1–3, 592<sup>a</sup>11; *Laws* 709<sup>d</sup>, 710<sup>c</sup>7–8, 736<sup>c</sup>5–<sup>d</sup>4, 740<sup>e</sup>8–741<sup>a</sup>4, 742<sup>e</sup>1–4, 780<sup>b</sup>4–6, <sup>e</sup>1–2, 841<sup>c</sup>6–8, 960<sup>d</sup>5–<sup>e</sup>2; Aristotle *Politics* 1265<sup>a</sup>18–19, 1270<sup>b</sup>20, 1295<sup>a</sup>25–30, 1296<sup>a</sup>37–38, 1328<sup>a</sup>20–21, 1329<sup>a</sup>15 ff., 1331<sup>b</sup>18–23, 1332<sup>a</sup>28–<sup>b</sup>10, 1336<sup>b</sup>40 ff.



there is a variety of legitimate regimes. The variety of legitimate regimes corresponds to the variety of types of relevant circumstances. Whereas the best regime is possible only under the most favorable conditions, legitimate or just regimes are possible and morally necessary at all times and in all places. The distinction between the best regime and legitimate regimes has its root in the distinction between the noble and the just. Everything noble is just, but not everything just is noble. To pay one's debts is just, but not noble. Deserved punishment is just, but not noble. The farmers and artisans in Plato's best polity lead just lives, but they do not lead noble lives: they lack the opportunity for acting nobly. What a man does under duress is just in the sense that he cannot be blamed for it; but it can never be noble. Noble actions require, as Aristotle says, a certain equipment; without such equipment they are not possible. But we are obliged to act justly under all circumstances. A very imperfect regime may supply the only just solution to the problem of a given community; but, since such a regime cannot be effectively directed toward man's full perfection, it can never be noble.<sup>17</sup>

To avoid misunderstandings, it is necessary to say a few words about the answer, characteristic of the classics, to the question of the best regime. The best regime is that in which the best men habitually rule, or aristocracy. Goodness is, if not identical with wisdom, at any rate dependent on wisdom: the best regime would seem to be the rule of the wise. In fact, wisdom appeared to the classics as that title to rule which is highest according to nature. It would be absurd to hamper the free flow of wisdom by any regulations; hence the rule of the wise must be absolute rule. It would be equally absurd to ham-

17. Plato *Republic* 431<sup>b</sup>9–433<sup>d</sup>5, 434<sup>c</sup>7–10; Xenophon *Cyropaedia* viii. 2. 23; Agesilaus 11. 8; Aristotle *Nicomachean Ethics* 1120<sup>a</sup>11–20, 1135<sup>a</sup>5; *Politics* 1288<sup>b</sup>10 ff., 1293<sup>b</sup>22–27, 1296<sup>b</sup>25–35 (cf. [Thomas Aquinas] *ad loc.*), 1332<sup>a</sup>10 ff.; *Rhetoric* 1366<sup>b</sup>31–34; Polybius vi. 6. 6–9.



per the free flow of wisdom by consideration of the unwise wishes of the unwise; hence the wise rulers ought not to be responsible to their unwise subjects. To make the rule of the wise dependent on election by the unwise or consent of the unwise would mean to subject what is by nature higher to control by what is by nature lower, i.e., to act against nature. Yet this solution, which at first glance seems to be the only just solution for a society in which there are wise men, is, as a rule, impracticable. The few wise cannot rule the many unwise by force. The unwise multitude must recognize the wise as wise and obey them freely because of their wisdom. But the ability of the wise to persuade the unwise is extremely limited: Socrates, who lived what he taught, failed in his attempt to govern Xanthippe. Therefore, it is extremely unlikely that the conditions required for the rule of the wise will ever be met. What is more likely to happen is that an unwise man, appealing to the natural right of wisdom and catering to the lowest desires of the many, will persuade the multitude of his right: the prospects for tyranny are brighter than those for rule of the wise. This being the case, the natural right of the wise must be questioned, and the indispensable requirement for wisdom must be qualified by the requirement for consent. The political problem consists in reconciling the requirement for wisdom with the requirement for consent. But whereas, from the point of view of egalitarian natural right, consent takes precedence over wisdom, from the point of view of classic natural right, wisdom takes precedence over consent. According to the classics, the best way of meeting these two entirely different requirements—that for wisdom and that for consent or for freedom—would be that a wise legislator frame a code which the citizen body, duly persuaded, freely adopts. That code, which is, as it were, the embodiment of wisdom, must be as little subject to alteration as possible; the rule of law is to take the place of the rule of men, however wise. The administration of



the law must be intrusted to a type of man who is most likely to administer it equitably, i.e., in the spirit of the wise legislator, or to "complete" the law according to the requirements of circumstances which the legislator could not have foreseen. The classics held that this type of man is the gentleman. The gentleman is not identical with the wise man. He is the political reflection, or imitation, of the wise man. Gentlemen have this in common with the wise man, that they "look down" on many things which are highly esteemed by the vulgar or that they are experienced in things noble and beautiful. They differ from the wise because they have a noble contempt for precision, because they refuse to take cognizance of certain aspects of life, and because, in order to live as gentlemen, they must be well off. The gentleman will be a man of not too great inherited wealth, chiefly landed, but whose way of life is urban. He will be an urban patrician who derives his income from agriculture. The best regime will then be a republic in which the landed gentry, which is at the same time the urban patriciate, well-bred and public spirited, obeying the laws and completing them, ruling and being ruled in turn, predominates and gives society its character. The classics devised or recommended various institutions which appeared to be conducive to the rule of the best. Probably the most influential suggestion was the mixed regime, mixed of kingship, aristocracy, and democracy. In the mixed regime the aristocratic element—the gravity of the senate—occupies the intermediate, i.e., the central or key position. The mixed regime is, in fact—and it is meant to be—an aristocracy which is strengthened and protected by the admixture of monarchic and democratic institutions. To summarize, one may say that it is characteristic of the classic natural right teaching to culminate in a twofold answer to the question of the best regime: the simply best regime would be the absolute rule of the wise; the practically



best regime is the rule, under law, of gentlemen, or the mixed regime.<sup>18</sup>

According to a view which today is rather common and which may be described as Marxist or crypto-Marxist, the classics preferred the rule of the urban patriciate because they themselves belonged to the urban patriciate or were hangers-on of the urban patriciate. We need not take issue with the contention that, in studying a political doctrine, we must consider the bias, and even the class bias, of its originator. It suffices to demand that the class to which the thinker in question belongs be correctly identified. In the common view the fact is overlooked that there is a class interest of the philosophers qua philosophers, and this oversight is ultimately due to the denial of the possibility of philosophy. Philosophers as philosophers do not go with their families. The selfish or class interest of the philosophers consists in being left alone, in being allowed to live the life of the blessed on earth by devoting themselves to investigation of the most important subjects. Now it is an experience of many centuries in greatly different natural and moral climates that there was one and only one class which was habitually sympathetic to philosophy, and not intermittently, like kings; and this was the urban patriciate. The common people had no sympathy for philosophy and philosophers. As Cicero put it, philosophy was suspect to the many. Only in the nineteenth century did this state of things profoundly and manifestly change, and the change was ultimately due to a complete change in the meaning of philosophy.

18. Plato *Statesman* 293<sup>e</sup>7 ff.; *Laws* 680<sup>e</sup>1-4, 684<sup>c</sup>1-6, 690<sup>b</sup>8-<sup>c</sup>3, 691<sup>d</sup>7-692<sup>b</sup>1, 693<sup>b</sup>1-<sup>e</sup>8, 701<sup>e</sup>, 744<sup>b</sup>1-<sup>d</sup>1, 756<sup>e</sup>9-10, 806<sup>d</sup>7 ff., 846<sup>d</sup>1-7; Xenophon *Memorabilia* iii. 9. 10-13; iv. 6. 12; *Oeconomicus* 4. 2 ff., 6. 5-10, 11. 1 ff.; *Anabasis* v. 8. 26; Aristotle *Nicomachean Ethics* 1160<sup>a</sup>32-1161<sup>a</sup>30; *Eudemian Ethics* 1242<sup>b</sup>27-31; *Politics* 1261<sup>a</sup>38-<sup>b</sup>3, 1265<sup>b</sup>33-1266<sup>a</sup>6, 1270<sup>b</sup>8-27, 1277<sup>b</sup>35-1278<sup>a</sup>22, 1278<sup>a</sup>37-1279<sup>a</sup>17, 1284<sup>a</sup>4-<sup>b</sup>34, 1289<sup>a</sup>39 ff.; Polybius vi. 51. 5-8; Cicero *Republic* i. 52, 55 (cf. 41), 56-63, 69; ii. 37-40, 55-56, 59; iv. 8; Diogenes Laertius vii. 131; Thomas Aquinas *Summa theologiae* ii. 1. qu. 95, *a.* 1 ad 2 and *a.* 4; qu. 105, *a.* 1.



The classic natural right doctrine in its original form, if fully developed, is identical with the doctrine of the best regime. For the question as to what is by nature right or as to what is justice finds its complete answer only through the construction, in speech, of the best regime. The essentially political character of the classic natural right doctrine appears most clearly in Plato's *Republic*. Hardly less revealing is the fact that Aristotle's discussion of natural right is a part of his discussion of political right, especially if one contrasts the opening of Aristotle's statement with the statement of Ulpian in which natural right is introduced as a part of private right.<sup>19</sup> The political character of natural right became blurred, or ceased to be essential, under the influence of both ancient egalitarian natural right and the biblical faith. On the basis of the biblical faith, the best regime simply is the City of God; therefore, the best regime is coeval with Creation and hence always actual; and the cessation of evil, or Redemption, is brought about by God's supernatural action. The question of the best regime thus loses its crucial significance. The best regime as the classics understood it ceases to be identical with the perfect moral order. The end of civil society is no longer "virtuous life as such" but only a certain segment of the virtuous life. The notion of God as lawgiver takes on a certainty and definiteness which it never possessed in classical philosophy. Therefore natural right or, rather, natural law becomes independent of the best regime and takes precedence over it. The Second Table of the Decalogue and the principles embodied in it are of infinitely higher dignity than the best regime.<sup>20</sup> It is classic natural right in this profoundly modified form that has exercised

19. Aristotle *Nicomachean Ethics* 1134<sup>b</sup>18-19; *Politics* 1253<sup>a</sup>38; *Digest* i. 1. 1-4.

20. Compare Thomas Aquinas *Summa theologiae* ii. 1. qu. 105, *a.* 1 with qu. 104, *a.* 3, qu. 100, *a.* 8, and 99, *a.* 4; also ii. 2. qu. 58, *a.* 6 and *a.* 12. See also Heinrich A. Rommen, *The State in Catholic Thought* (St. Louis, Mo.: B. Herder Book Co., 1945), pp. 309, 330-31, 477, 479. Milton, *Of Reformation Touching Church-Discipline in England* (*Milton's Prose* ["Oxford World's Classics" ed.], p. 55): "'Tis not the common law, nor the civil, but piety, and justice, that are our foundresses; they stoop not, neither change



the most powerful influence on Western thought almost since the beginnings of the Christian Era. Still, even this crucial modification of the classical teaching was in a way anticipated by the classics. According to the classics, political life as such is essentially inferior in dignity to the philosophic life.

This observation leads to a new difficulty, or rather it leads us back to the same difficulty with which we have been confronted throughout—e.g., when we used terms like “gentlemen.” If man’s ultimate end is trans-political, natural right would seem to have a trans-political root. Yet can natural right be adequately understood if it is directly referred to this root? Can natural right be deduced from man’s natural end? Can it be deduced from anything?

Human nature is one thing, virtue or the perfection of human nature is another. The definite character of the virtues and, in particular, of justice cannot be deduced from human nature. In the language of Plato, the idea of man is indeed compatible with the idea of justice, but it is a different idea. The idea of justice even seems to belong to a different kind of ideas than the idea of man, since the idea of man is not in the same way problematic as the idea of justice; there is hardly any disagreement as to whether a given being is a man, whereas there is habitual disagreement in regard to things just and noble. In the language of Aristotle, one could say that the relation of virtue to human nature is comparable to that of act and potency, and the act cannot be determined by starting from the potency, but, on the contrary, the potency becomes known by looking back to it from the act.<sup>21</sup> Human nature

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colour for Aristocracy, Democracy, or Monarchy, nor yet at all interrupt their just courses, but *far above the taking notice of these inferior niceties* with perfect sympathy, wherever they meet, kiss each other.” Italics are not in the original.

21. Plato *Republic* 523<sup>a</sup>1–524<sup>d</sup>6; *Statesman* 285<sup>d</sup>8–286<sup>a</sup>7; *Phaedrus* 250<sup>b</sup>1–5, 263<sup>a</sup>1–<sup>b</sup>5; *Alcibiades* i. 111<sup>b</sup>11–112<sup>c</sup>7; Aristotle *Nicomachean Ethics* 1097<sup>b</sup>24–1098<sup>a</sup>18; 1103<sup>a</sup>23–26; 1106<sup>a</sup>15–24; *De anima* 415<sup>a</sup>16–22; Cicero *De finibus* iii. 20–23, 38; v. 46; Thomas Aquinas *Summa theologiae* ii. 1. qu. 54, *a.* 1, and 55, *a.* 1.



“is” in a different manner than its perfection or virtue. Virtue exists in most cases, if not in all cases, as an object of aspiration and not as fulfilment. Therefore, it exists in speech rather than in deed. Whatever may be the proper starting point for studying human nature, the proper starting point for studying the perfection of human nature, and hence, in particular, natural right, is what is said about these subjects or the opinions about them.

Very roughly speaking, we may distinguish three types of classic natural right teachings, or three different manners in which the classics understood natural right. These three types are the Socratic-Platonic, the Aristotelian, and the Thomistic. As regards the Stoics, it seems to me that their natural right teaching belongs to the Socratic-Platonic type. According to a view which today is fairly common, the Stoics originated an entirely new type of natural right teaching. But, to say nothing here of other considerations, this opinion is based on neglect of the close connection between stoicism and cynicism,<sup>22</sup> and cynicism was originated by a Socratic.

To describe, then, as concisely as we can the character of what we shall venture to call the “Socratic-Platonic-Stoic natural right teaching,” we start from the conflict between the two most common opinions regarding justice: that justice is good and that justice consists in giving to everyone what is due to him. What is due to a man is defined by law, i.e., by the law of the city. But the law of the city may be foolish and hence harmful or bad. Therefore, the justice that consists in giving to everyone what is due to him may be bad. If justice is to remain good, we must conceive of it as essentially independent of law. We shall then define justice as the habit of giving

22. Cicero *De finibus* iii. 68; Diogenes Laertius vi. 14-15; vii. 3, 121; Sextus Empiricus *Pyrrhonica* iii. 200, 205. Montaigne opposes “[la] secte Stoïque, plus franche” to “la secte Peripatétique, plus civile” (*Essais*, II, 12 [“Chronique des lettres françaises,” Vol. IV], p. 40).



to everyone what is due to him according to nature. A hint as to what is due to others according to nature is supplied by the generally accepted opinion according to which it is unjust to return a dangerous weapon to its lawful owner if he is insane or bent on the destruction of the city. This implies that nothing can be just which is harmful to others, or that justice is the habit of not harming others. This definition fails, however, to account for the frequent cases where we blame as unjust such men who, indeed, never harm another but scrupulously refrain from ever helping another by deed or by speech. Justice will then be the habit of benefiting others. The just man is he who gives to everyone, not what a possibly foolish law prescribes, but what is good for the other, i.e., what is by nature good for the other. Yet not everyone knows what is good for man in general, and for every individual in particular. Just as only the physician truly knows what is in each case good for the body, only the wise man truly knows what is good in each case for the soul. This being the case, there cannot be justice, i.e., giving to everyone what is by nature good for him, except in a society in which wise men are in absolute control.

Let us take the example of the big boy who has a small coat and the small boy who has a big coat. The big boy is the lawful owner of the small coat because he, or his father, has bought it. But it is not good for him; it does not fit him. The wise ruler will therefore take the big coat away from the small boy and give it to the big boy without any regard to legal ownership. The least we have to say is that just ownership is something entirely different from legal ownership. If there is to be justice, the wise rulers must assign to everyone what is truly due to him or what is by nature good for him. They will give to everyone only what he can use well, and they will take away from everyone what he cannot use well. Justice is then incompatible with what is generally understood by private ownership. All using is ultimately for the sake of action or



doing; justice requires, therefore, above all, that everyone be assigned such a function or such a job as he can perform well. But everyone does best that for which he is best fitted by nature. Justice exists, then, only in a society in which everyone does what he can do well and in which everyone has what he can use well. Justice is identical with membership in such a society and devotion to such a society—a society according to nature.<sup>23</sup>

We must go further. The justice of the city may be said to consist in acting according to the principle “from everyone according to his capacity and to everyone according to his merits.” A society is just if its living principle is “equality of opportunity,” i.e., if every human being belonging to it has the opportunity, corresponding to his capacities, of deserving well of the whole and receiving the proper reward for his deserts. Since there is no good reason for assuming that the capacity for meritorious action is bound up with sex, beauty, and so on, “discrimination” on account of sex, ugliness, and so on is unjust. The only proper reward for service is honor, and therefore the only proper reward for outstanding service is great authority. In a just society the social hierarchy will correspond strictly to the hierarchy of merit and of merit alone. Now, as a rule, civil society regards as an indispensable condition for holding high office that the individual concerned be a born citizen, a son of a citizen father and a citizen mother. That is to say, civil society in one way or another qualifies the principle of merit, i.e., the principle *par excellence* of justice, by the wholly unconnected principle of indigenouness. In order to be truly just, civil society would have to drop this

23. Plato *Republic* 331<sup>c</sup>1–332<sup>d</sup>4, 335<sup>d</sup>11–12, 421<sup>e</sup>7–422<sup>d</sup>7 (cf. *Laws* 739<sup>b</sup>8–<sup>e</sup>3 and Aristotle *Politics* 1264<sup>a</sup>13–17), 433<sup>e</sup>3–434<sup>a</sup>1; *Crito* 49<sup>c</sup>; *Clitopho* 407<sup>e</sup>8–408<sup>b</sup>5, 410<sup>b</sup>1–3; Xenophon *Memorabilia* iv. 4. 12–13, 8. 11; *Oeconomicus* 1. 5–14; *Cyropaedia* i. 3. 16–17; Cicero *Republic* i. 27–28; iii. 11; *Laws* i. 18–19; *Offices* i. 28, 29, 31; iii. 27; *De finibus* iii. 71, 75; *Lucullus* 136–37; cf. Aristotle *Magna moralia* 1199<sup>b</sup>10–35.



qualification; civil society must be transformed into the "world-state." That this is necessary is said to appear also from the following consideration: Civil society as closed society necessarily implies that there is more than one civil society, and therewith that war is possible. Civil society must therefore foster warlike habits. But these habits are at variance with the requirements of justice. If people are engaged in war, they are concerned with victory and not with assigning to the enemy what an impartial and discerning judge would consider beneficial to the enemy. They are concerned with harming others, and the just man appeared to be a man who does not harm anyone. Civil society is therefore forced to make a distinction: the just man is he who does not harm, but loves, his friends or neighbors, i.e., his fellow-citizens, but who does harm or who hates his enemies, i.e., the foreigners who as such are at least potential enemies of his city. We may call this type of justice "citizen-morality," and we shall say that the city necessarily requires citizen-morality in this sense. But citizen-morality suffers from an inevitable self-contradiction. It asserts that different rules of conduct apply in war than in peace, but it cannot help regarding at least some relevant rules, which are said to apply to peace only, as universally valid. The city cannot leave it at saying, for instance, that deception, and especially deception to the detriment of others, is bad in peace but praiseworthy in war. It cannot help viewing with suspicion the man who is good at deceiving, or it cannot help regarding the devious or disingenuous ways which are required for any successful deception as simply mean or distasteful. Yet the city must command, and even praise, such ways if they are used against the enemy. To avoid this self-contradiction, the city must transform itself into the "world-state." But no human being and no group of human beings can rule the whole human race justly. Therefore, what is divined in speaking of the "world-state" as an all-compre-



hensive human society subject to one human government is in truth the cosmos ruled by God, which is then the only true city, or the city that is simply according to nature because it is the only city which is simply just. Men are citizens of this city, or freemen in it, only if they are wise; their obedience to the law which orders the natural city, to the natural law, is the same thing as prudence.<sup>24</sup>

24. Plato *Statesman* 271<sup>d</sup>3–272<sup>a</sup>1; *Laws* 713<sup>a</sup>2–<sup>e</sup>6; Xenophon *Cyropaedia* i. 6. 27–34; ii. 2. 26; Cicero *Republic* iii. 33; *Laws* i. 18–19, 22–23, 32, 61; ii. 8–11; Frag. 2; *De finibus* iv. 74; v. 65, 67; *Lucullus* 136–37. J. von Arnim, *Stoicorum veterum fragmenta* iii, Frags. 327 and 334. The problem discussed in this paragraph is adumbrated in Plato's *Republic* by the following feature, among others: Polemarchus' definition according to which justice consists in helping the friends and hurting the enemies is preserved in the requirement regarding the guardians according to which the guardians must be similar to dogs, namely, meek to friends or acquaintances and the opposite of meek to enemies or strangers (375<sup>a</sup>2–376<sup>b</sup>1; cf. 378<sup>c</sup>7, 537<sup>a</sup>4–7; and Aristotle *Politics* 1328<sup>a</sup>7–11). It should be noted that it is Socrates, and not Polemarchus, who first brings up the subject "enemies" (332<sup>b</sup>5; cf. also 335<sup>a</sup>6–7) and that Polemarchus appears as witness for Socrates in the latter's discussion with Thrasymachus in which Clitopho appears as witness for Thrasymachus (340<sup>a</sup>1–<sup>c</sup>1; cf. *Phaedrus* 257<sup>b</sup>3–4). If one considers these things, one is no longer bewildered by the information supplied by the *Clitopho* (410<sup>a</sup>7–<sup>b</sup>1), according to which the only definition of justice which Socrates himself suggested to Clitopho is the one which in the *Republic* Polemarchus suggests with the assistance of Socrates. Many interpreters of Plato do not sufficiently consider the possibility that his Socrates was as much concerned with understanding what justice is, i.e., with understanding the whole complexity of the problem of justice, as with preaching justice. For if one is concerned with understanding the problem of justice, one must go through the stage in which justice presents itself as identical with citizen-morality, and one must not merely rush through that stage. One may express the conclusion of the argument sketched in this paragraph by saying that there cannot be true justice if there is no divine rule or providence. One would not reasonably expect much virtue or much justice of men who live habitually in a condition of extreme scarcity so that they have to fight with one another constantly for the sake of mere survival. If there is to be justice among men, care must be taken that they are not compelled to think constantly of mere self-preservation and to act toward their fellows in the way in which men mostly act under such conditions. But such care cannot be human providence. The cause of justice is infinitely strengthened if the condition of man as man, and hence especially the condition of man in the beginning (when he could not yet have been corrupted by false opinions), was one of nonscarcity. There is then a profound kinship between the notion of natural law and the notion of a perfect beginning: the golden age or the Garden of Eden. Cf. Plato *Laws* 713<sup>a</sup>2–<sup>e</sup>2, as well as *Statesman* 271<sup>d</sup>3–272<sup>b</sup>1 and 272<sup>d</sup>6–273<sup>a</sup>1: the rule of God was accompanied by plenty and peace; scarcity leads to war. Cf. *Statesman* 274<sup>b</sup>5 ff. with *Protagoras* 322<sup>a</sup>8 ff.



This solution to the problem of justice obviously transcends the limits of political life.<sup>25</sup> It implies that the justice which is possible within the city, can be only imperfect or cannot be unquestionably good. There are still other reasons which force men to seek beyond the political sphere for perfect justice or, more generally, for the life that is truly according to nature. It is not possible here to do more than barely to indicate these reasons. In the first place, the wise do not desire to rule; they must therefore be compelled to rule. They must be compelled because their whole life is devoted to the pursuit of something which is absolutely higher in dignity than any human things—the unchangeable truth. And it appears to be against nature that the lower should be preferred to the higher. If striving for knowledge of the eternal truth is the ultimate end of man, justice and moral virtue in general can be fully legitimated only by the fact that they are required for the sake of that ultimate end or that they are conditions of the philosophic life. From this point of view the man who is merely just or moral without being a philosopher appears as a mutilated human being. It thus becomes a question whether the moral or just man who is not a philosopher is simply superior to the nonphilosophic “erotic” man. It likewise becomes a question whether justice and morality in general, in so far as they are required for the sake of the philosophic life, are identical, as regards both their meaning and their extension, with justice and morality as they are commonly understood, or whether morality does not have two entirely different roots, or whether what Aristotle calls moral virtue is not, in fact, merely political or vulgar virtue. The latter question can also be expressed by asking whether, by transforming opinion about morality into knowledge of morality, one does not

25. Cicero *Laws* i. 61–62; iii. 13–14; *De finibus* iv. 7, 22, 74; *Lucullus* 136–37; Seneca *Ep.* 68. 2.



transcend the dimension of morality in the politically relevant sense of the term.<sup>26</sup>

However this may be, both the obvious dependence of the philosophic life on the city and the natural affection which men have for men, and especially for their kin, regardless of whether or not these men have "good natures" or are potential philosophers, make it necessary for the philosopher to descend again into the cave, i.e., to take care of the affairs of the city, whether in a direct or more remote manner. In descending into the cave, the philosopher admits that what is intrinsically or by nature the highest is not the most urgent for man, who is essentially an "in-between" being—between the brutes and the gods. When attempting to guide the city, he knows then in advance that, in order to be useful or good for the city, the requirements of wisdom must be qualified or diluted. If these requirements are identical with natural right or with natural law, natural right or natural law must be diluted in order to become compatible with the requirements of the city. The city requires that wisdom be reconciled with consent. But to admit the necessity of consent, i.e., of the consent of the unwise, amounts to admitting a right of unwisdom, i.e., an irrational, if inevitable, right. Civil life requires a fundamental compromise between wisdom and folly, and this means a compromise between the natural right that is discerned by reason or understanding and the right that is based on opinion alone. Civil life requires the dilution of nat-

26. Plato *Republic* 486<sup>b</sup>6–13, 519<sup>b</sup>7–<sup>c</sup>7, 520<sup>e</sup>4–521<sup>b</sup>11, 619<sup>b</sup>7–<sup>d</sup>1; *Phaedo* 82<sup>a</sup>10–<sup>c</sup>1; *Theaetetus* 174<sup>a</sup>4–<sup>b</sup>6; *Laws* 804<sup>b</sup>5–<sup>c</sup>1. As for the problem of the relation between justice and *eros*, one has to compare the *Gorgias* as a whole with the *Phaedrus* as a whole. An attempt in this direction was made by David Grene, *Man in His Pride: A Study in the Political Philosophy of Thucydides and Plato* (Chicago: University of Chicago Press, 1950), pp. 137–46 (cf. *Social Research*, 1951, pp. 394–97). Aristotle *Nicomachean Ethics* 1177<sup>a</sup>25–34, <sup>b</sup>16–18, 1178<sup>a</sup>9–<sup>b</sup>21; *Eudemian Ethics* 1248<sup>b</sup>10–1249<sup>b</sup>25. Compare *Politics* 1325<sup>b</sup>24–30 with the parallelism between the justice of the individual and the justice of the city in the *Republic*. Cicero *Offices* i. 28; iii. 13–17; *Republic* i. 28; *De finibus* iii. 48; iv. 22; cf. also *Republic* vi. 29 with iii. 11; Thomas Aquinas *Summa theologiae* ii. 1. qu. 58, a. 4–5.



ural right by merely conventional right. Natural right would act as dynamite for civil society. In other words, the simply good, which is what is good by nature and which is radically distinct from the ancestral, must be transformed into the politically good, which is, as it were, the quotient of the simply good and the ancestral: the politically good is what "removes a vast mass of evil without shocking a vast mass of prejudice." It is in this necessity that the need for inexactness in political or moral matters is partly founded.<sup>27</sup>

The notion that natural right must be diluted in order to become compatible with civil society is the philosophic root of the later distinction between the primeval natural right and the secondary natural right.<sup>28</sup> This distinction was linked with the view that the primeval natural right, which excludes private property and other characteristic features of civil society, belonged to man's original state of innocence, whereas the secondary natural right is needed after man has become corrupted, as a remedy for his corruption. We must not overlook, however, the difference between the notion that natural right must be diluted and the notion of a secondary natural right. If the principles valid in civil society are diluted natural right, they are much less venerable than if they are regarded as secondary natural right, i.e., as divinely established and involving an absolute duty for fallen man. Only in the latter case is justice, as it is commonly understood, unquestionably good. Only in the latter case does natural right in the strict sense or the primary natural right cease to be dynamite for civil society.

Cicero has embodied in his writings, especially in the third book of his *Republic* and in the first two books of his *Laws*, a

27. Plato *Republic* 414<sup>b8</sup>–415<sup>d5</sup> (cf. 331<sup>e1</sup>–3), 501<sup>a9</sup>–<sup>e2</sup> (cf. 500<sup>e2</sup>–<sup>d8</sup> and 484<sup>e8</sup>–<sup>d3</sup>); *Laws* 739, 757<sup>a5</sup>–758<sup>a2</sup>; Cicero *Republic* ii. 57.

28. Cf. R. Stintzing, *Geschichte der deutschen Rechtswissenschaft*, I (Munich and Leipzig, 1880), pp. 302 ff., 307, 371; see also, e.g., Hooker, *Laws of Ecclesiastical Polity*, Book I, chap. x, sec. 13.



mitigated version of the original Stoic natural law teaching. Hardly any trace of the connection between stoicism and cynicism is left in his presentation. Natural law as presented by him does not seem to have to be diluted in order to become compatible with civil society; it seems to be in natural harmony with civil society. Accordingly, what one is tempted to call the "Ciceronian natural-law teaching" comes closer to what is regarded at present by some scholars as the typical pre-modern natural law teaching than any earlier doctrine of which we have more than fragments. It is therefore of some importance that Cicero's attitude toward the teaching in question be not misunderstood.<sup>29</sup>

In the *Laws*, in which Cicero and his companions seek the shade and in which Cicero himself presents the Stoic natural law teaching, he indicates that he is not certain of the truth of that doctrine. This is not surprising. The Stoic natural law teaching is based on the doctrine of divine providence and on an anthropocentric teleology. In his *On the Nature of the Gods* Cicero subjects that theological-teleological doctrine to severe criticism, with the result that he cannot admit it as more than approaching the semblance of truth. Similarly, he accepts in the *Laws* the Stoic doctrine of divination (which is a branch of the Stoic doctrine of providence), while he attacks it in the second book of his *On Divination*. One of the interlocutors in the *Laws* is Cicero's friend Atticus, who assents to the Stoic natural law doctrine but who, being an Epicurean, cannot have assented to it because he regarded it as true or in his capacity as thinker; he rather assented to it in his capacity as Roman citizen and more particularly as an adherent of aristocracy, because he regarded it as politically salutary. It is reasonable to assume that Cicero's seemingly unqualified acceptance of the Stoic natural law teaching has the same motivation as Atticus'. Cicero himself says that he wrote dialogues in order

29. See, e.g., *De finibus* iii. 64-67.



not to present his real views too openly. After all, he was an Academic skeptic and not a Stoic. And the thinker whom he claims to follow, and whom he admires most, is Plato himself, the founder of the Academy. The least that must be said is that Cicero did not regard the Stoic natural law teaching, in so far as it goes beyond Plato's teaching of natural right, as evidently true.<sup>30</sup>

In the *Republic*, in which the interlocutors seek the sun and which is admittedly a free imitation of Plato's *Republic*, the Stoic natural law teaching, or the defense of justice (i.e., the proof that justice is by nature good), is not presented by the chief character. Scipio, who occupies in Cicero's work the position which Socrates occupies in the Platonic model, is fully convinced of the smallness of all human things and therefore longs for the contemplative life to be enjoyed after death. That version of the Stoic natural law teaching—the exoteric version—which is in perfect harmony with the claims of civil society, is intrusted to Laelius, who is distrustful of philosophy in the full and strict sense of the term and who is absolutely at home on earth, in Rome; he is sitting in the center, imitating the earth. Laelius goes so far as to find no difficulty in reconciling natural law with the claims of the Roman Empire in particular. Scipio, however, indicates the original and unmitigated Stoic natural law teaching, which is incompatible with the claims of civil society. He likewise indicates how much of force and fraud was required for making Rome great: the Roman regime, which is the best regime in existence, is not simply just. He thus seems to indicate that “the natural law” on which civil society can act is, in truth, natural law diluted by a lower principle. The case against the natural character of right is made by Philus, who is an Academic skeptic, like

30. *Laws* i. 15, 18, 19, 21, 22, 25, 32, 35, 37–39, 54, 56; ii. 14, 32–34, 38–39; iii. 1, 26, 37; *Republic* ii. 28; iv. 4; *De natura deorum* ii. 133 ff.; iii. 66 ff., 95; *De divinatione* ii. 70 ff.; *Offices* i. 22; *De finibus* ii. 45; *Tusc. Disp.* v. 11. Compare n. 24 above with chap. iii, n. 22.



Cicero himself.<sup>31</sup> It is then misleading to call Cicero an adherent of the Stoic natural law teaching.

To turn now to the Aristotelian natural right teaching, we have to note first that the only thematic treatment of natural right which is certainly by Aristotle and which certainly expresses Aristotle's own view covers barely one page of the *Nicomachean Ethics*. In addition, the passage is singularly elusive; it is not illumined by a single example of what is by nature right. This much, however, can safely be said: according to Aristotle, there is no fundamental disproportion between natural right and the requirements of political society, or there is no essential need for the dilution of natural right. In this, as well as in many other respects, Aristotle opposes the divine madness of Plato and, by anticipation, the paradoxes of the Stoics, in the spirit of his unrivaled sobriety. A right which necessarily transcends political society, he gives us to understand, cannot be the right natural to man, who is by nature a political animal. Plato never discusses any subject—be it the city or the heavens or numbers—without keeping in view the elementary Socratic question, "What is the right way of life?" And the simply right way of life proves to be the philosophic life. Plato eventually defines natural right with direct reference to the fact that the only life which is simply just is the life of the philosopher. Aristotle, on the other hand, treats each of the various levels of beings, and hence especially every level of human life, on its own terms. When he discusses justice, he discusses justice as everyone knows it and as it is understood in political life, and he refuses to be drawn into the dialectical whirlpool that carries us far beyond justice in the ordinary sense of the term toward the philosophic life. Not that he denies the ultimate right of that dialectical process or the tension between the requirements of philosophy and those

31. *Republic* i. 18, 19, 26–28, 30, 56–57; iii. 8–9; iv. 4; vi. 17–18; cf. *ibid.* ii. 4, 12, 15, 20, 22, 26–27, 31, 53, with i. 62; iii. 20–22, 24, 31, 35–36; cf. also *De finibus* ii. 59.



of the city; he knows that the simply best regime belongs to an entirely different epoch than fully developed philosophy. But he implies that the intermediate stages of that process, while not absolutely consistent, are sufficiently consistent for all practical purposes. It is true that those stages can exist only in a twilight, but this is a sufficient reason for the analyst—and especially for the analyst whose primary concern is with guiding human actions—to leave them in that twilight. In the twilight which is essential to human life as merely human, the justice which may be available in the cities appears to be perfect justice and unquestionably good; there is no need for the dilution of natural right. Aristotle says, then, simply that natural right is a part of political right. This does not mean that there is no natural right outside the city or prior to the city. To say nothing of the relations between parents and children, the relation of justice that obtains between two complete strangers who meet on a desert island is not one of political justice and is nevertheless determined by nature. What Aristotle suggests is that the most fully developed form of natural right is that which obtains among fellow-citizens; only among fellow-citizens do the relations which are the subject matter of right or justice reach their greatest density and, indeed, their full growth.

The second assertion regarding natural right which Aristotle makes—an assertion much more surprising than the first—is that all natural right is changeable. According to Thomas Aquinas, this statement must be understood with a qualification: the principles of natural right, the axioms from which the more specific rules of natural right are derived, are universally valid and immutable; what are mutable are only the more specific rules (e.g., the rule to return deposits). The Thomistic interpretation is connected with the view that there is a *habitus* of practical principles, a *habitus* which he calls “conscience” or, more precisely, *synderesis*. The very terms show



that this view is alien to Aristotle; it is of Patristic origin. In addition, Aristotle says explicitly that all right—hence also all natural right—is changeable; he does not qualify that statement in any way. There exists an alternative medieval interpretation of Aristotle's doctrine, namely, the Averroistic view or, more adequately stated, the view characteristic of the *falāsifa* (i.e., of the Islamic Aristotelians) as well as of the Jewish Aristotelians. This view was set forth within the Christian world by Marsilius of Padua and presumably by other Christian or Latin Averroists. According to Averroës, Aristotle understands by natural right "legal natural right." Or, as Marsilius puts it, natural right is only quasi-natural; actually, it depends on human institution or convention; but it is distinguished from merely positive right by the fact that it is based on ubiquitous convention. In all civil societies the same broad rules of what constitutes justice necessarily grow up. They specify the minimum requirements of society; they correspond roughly to the Second Table of the Decalogue but include the command of divine worship. In spite of the fact that they seem to be evidently necessary and are universally recognized, they are conventional for this reason: Civil society is incompatible with any immutable rules, however basic; for in certain conditions the disregard of these rules may be needed for the preservation of society; but, for pedagogic reasons, society must present as universally valid certain rules which are generally valid. Since the rules in question obtain normally, all social teachings proclaim these rules and not the rare exceptions. The effectiveness of the general rules depends on their being taught without qualifications, without ifs and buts. But the omission of the qualifications which makes the rules more effective, makes them at the same time untrue. The unqualified rules are not natural right but conventional right.<sup>32</sup>

32. See L. Strauss, *Persecution and the Art of Writing* (Glencoe, Ill.: Free Press, 1952), pp. 95-141.



This view of natural right agrees with Aristotle in so far as it admits the mutability of all rules of justice. But it differs from Aristotle's view in so far as it implies the denial of natural right proper. How, then, can we find a safe middle road between these formidable opponents, Averroës and Thomas?

One is tempted to make the following suggestion: When speaking of natural right, Aristotle does not primarily think of any general propositions but rather of concrete decisions. All action is concerned with particular situations. Hence justice and natural right reside, as it were, in concrete decisions rather than in general rules. It is much easier to see clearly, in most cases, that this particular act of killing was just than to state clearly the specific difference between just killings as such and unjust killings as such. A law which solves justly a problem peculiar to a given country at a given time may be said to be just to a higher degree than any general rule of natural law which, because of its generality, may prevent a just decision in a given case. In every human conflict there exists the possibility of a just decision based on full consideration of all the circumstances, a decision demanded by the situation. Natural right consists of such decisions. Natural right thus understood is obviously mutable. Yet one can hardly deny that in all concrete decisions general principles are implied and presupposed. Aristotle recognized the existence of such principles, e.g., of those principles which he stated when speaking of "commutative" and "distributive" justice. Similarly, his discussion of the natural character of the city (a discussion which deals with the questions of principle raised by anarchism and pacifism), to say nothing of his discussion of slavery, is an attempt to establish principles of right. These principles would seem to be universally valid or unchangeable. What, then, does Aristotle mean by saying that all natural right is changeable? Or why does natural right ultimately reside in concrete decisions rather than in general rules?



There is a meaning of justice which is not exhausted by the principles of commutative and distributive justice in particular. Prior to being the commutatively and distributively just, the just is the common good. The common good consists normally in what is required by commutative and distributive justice or by other moral principles of this kind or in what is compatible with these requirements. But the common good also comprises, of course, the mere existence, the mere survival, the mere independence, of the political community in question. Let us call an extreme situation a situation in which the very existence or independence of a society is at stake. In extreme situations there may be conflicts between what the self-preservation of society requires and the requirements of commutative and distributive justice. In such situations, and only in such situations, it can justly be said that the public safety is the highest law. A decent society will not go to war except for a just cause. But what it will do during a war will depend to a certain extent on what the enemy—possibly an absolutely unscrupulous and savage enemy—forces it to do. There are no limits which can be defined in advance, there are no assignable limits to what might become just reprisals. But war casts its shadow on peace. The most just society cannot survive without “intelligence,” i.e., espionage. Espionage is impossible without a suspension of certain rules of natural right. But societies are not only threatened from without. Considerations which apply to foreign enemies may well apply to subversive elements within society. Let us leave these sad exigencies covered with the veil with which they are justly covered. It suffices to repeat that in extreme situations the normally valid rules of natural right are justly changed, or changed in accordance with natural right; the exceptions are as just as the rules. And Aristotle seems to suggest that there is not a single rule, however basic, which is not subject to exception. One could say that in all cases the common good must be preferred to the



private good and that this rule suffers no exception. But this rule does not say more than that justice must be observed, and we are anxious to know what it is that is required by justice or the common good. By saying that in extreme situations the public safety is the highest law, one implies that the public safety is not the highest law in normal situations; in normal situations the highest laws are the common rules of justice. Justice has two different principles or sets of principles: the requirements of public safety, or what is necessary in extreme situations to preserve the mere existence or independence of society, on the one hand, and the rules of justice in the more precise sense, on the other. And there is no principle which defines clearly in what type of cases the public safety, and in what type of cases the precise rules of justice, have priority. For it is not possible to define precisely what constitutes an extreme situation in contradistinction to a normal situation. Every dangerous external or internal enemy is inventive to the extent that he is capable of transforming what, on the basis of previous experience, could reasonably be regarded as a normal situation into an extreme situation. Natural right must be mutable in order to be able to cope with the inventiveness of wickedness. What cannot be decided in advance by universal rules, what can be decided in the critical moment by the most competent and most conscientious statesman on the spot, can be made visible as just, in retrospect, to all; the objective discrimination between extreme actions which were just and extreme actions which were unjust is one of the noblest duties of the historian.<sup>33</sup>

It is important that the difference between the Aristotelian view of natural right and Machiavellianism be clearly under-

33. As for the other principles of right which Aristotle recognized, it must suffice here to note that, according to him, a man who is not capable of being a member of civil society is not necessarily a defective human being; on the contrary, he may be a superior human being.



stood. Machiavelli denies natural right, because he takes his bearings by the extreme situations in which the demands of justice are reduced to the requirements of necessity, and not by the normal situations in which the demands of justice in the strict sense are the highest law. Furthermore, he does not have to overcome a reluctance as regards the deviations from what is normally right. On the contrary, he seems to derive no small enjoyment from contemplating these deviations, and he is not concerned with the punctilious investigation of whether any particular deviation is really necessary or not. The true statesman in the Aristotelian sense, on the other hand, takes his bearings by the normal situation and by what is normally right, and he reluctantly deviates from what is normally right only in order to save the cause of justice and humanity itself. No legal expression of this difference can be found. Its political importance is obvious. The two opposite extremes, which at present are called "cynicism" and "idealism," combine in order to blur this difference. And, as everyone can see, they have not been unsuccessful.

The variability of the demands of that justice which men can practice was recognized not only by Aristotle but by Plato as well. Both avoided the Scylla of "absolutism" and the Charybdis of "relativism" by holding a view which one may venture to express as follows: There is a universally valid hierarchy of ends, but there are no universally valid rules of action. Not to repeat what has been indicated before, when deciding what ought to be done, i.e., what ought to be done by this individual (or this individual group) here and now, one has to consider not only which of the various competing objectives is higher in rank but also which is most urgent in the circumstances. What is most urgent is legitimately preferred to what is less urgent, and the most urgent is in many cases lower in rank than the less urgent. But one cannot make a universal rule that urgency is a higher consideration than



rank. For it is our duty to make the highest activity, as much as we can, the most urgent or the most needful thing. And the maximum of effort which can be expected necessarily varies from individual to individual. The only universally valid standard is the hierarchy of ends. This standard is sufficient for passing judgment on the level of nobility of individuals and groups and of actions and institutions. But it is insufficient for guiding our actions.

The Thomistic doctrine of natural right or, more generally expressed, of natural law is free from the hesitations and ambiguities which are characteristic of the teachings, not only of Plato and Cicero, but of Aristotle as well. In definiteness and noble simplicity it even surpasses the mitigated Stoic natural law teaching. No doubt is left, not only regarding the basic harmony between natural right and civil society, but likewise regarding the immutable character of the fundamental propositions of natural law; the principles of the moral law, especially as formulated in the Second Table of the Decalogue, suffer no exception, unless possibly by divine intervention. The doctrine of *synderesis* or of the conscience explains why the natural law can always be duly promulgated to all men and hence be universally obligatory. It is reasonable to assume that these profound changes were due to the influence of the belief in biblical revelation. If this assumption should prove to be correct, one would be forced to wonder, however, whether the natural law as Thomas Aquinas understands it is natural law strictly speaking, i.e., a law knowable to the unassisted human mind, to the human mind which is not illumined by divine revelation. This doubt is strengthened by the following consideration: The natural law which is knowable to the unassisted human mind and which prescribes chiefly actions in the strict sense is related to, or founded upon, the natural end of man; that end is twofold: moral perfection and intellectual perfection; intellectual perfection is higher in dignity than



moral perfection; but intellectual perfection or wisdom, as unassisted human reason knows it, does not require moral virtue. Thomas solves this difficulty by virtually contending that, according to natural reason, the natural end of man is insufficient, or points beyond itself or, more precisely, that the end of man cannot consist in philosophic investigation, to say nothing of political activity. Thus natural reason itself creates a presumption in favor of the divine law, which completes or perfects the natural law. At any rate, the ultimate consequence of the Thomistic view of natural law is that natural law is practically inseparable not only from natural theology—i.e., from a natural theology which is, in fact, based on belief in biblical revelation—but even from revealed theology. Modern natural law was partly a reaction to this absorption of natural law by theology. The modern efforts were partly based on the premise, which would have been acceptable to the classics, that the moral principles have a greater evidence than the teachings even of natural theology and, therefore, that natural law or natural right should be kept independent of theology and its controversies. The second important respect in which modern political thought returned to the classics by opposing the Thomistic view is illustrated by such issues as the indissolubility of marriage and birth control. A work like Montesquieu's *Spirit of Laws* is misunderstood if one disregards the fact that it is directed against the Thomistic view of natural right. Montesquieu tried to recover for statesmanship a latitude which had been considerably restricted by the Thomistic teaching. What Montesquieu's private thoughts were will always remain controversial. But it is safe to say that what he explicitly teaches, as a student of politics and as politically sound and right, is nearer in spirit to the classics than to Thomas.